IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/11/2004

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THE HONOURABLE MR. JUSTICE V. KANAGARAJ

W.P. No.35266 of 2002

G.Bernatsan .. Petitioner

-Vs-

1. The District Collector,
Sivaganga District.

2. The Commissioner,
Panchayat Union,
Devakotti,
Sivaganga Dist. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K.Chandru, Senior Counsel
for Mr.K.Lavan

For Respondents : Mrs.V.Velumani, AGP for R1
Mr.P.Chandrasekaran for R2.

:O R D E R

Writ Petition has been filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the second respondent in Na.Ka.A1/2136/2001 dated 4.9.2002 and quash the same and consequently direct the second respondent to reinstate the petitioner in service with all attendant benefits.

2. The case of the petitioner is that he belongs to the Scheduled Caste and that he is a diploma candidate in Pharmacy in Indian Systems of Medicine (Siddha); that the petitioner was called for an interview by the appointment committee for the post of Pharmacist in Pudukuruchi Siddha Dispensary through the Perambalur District Employment Office along with three more candidates; that he was selected for the said post among the other three candidates fixing a pay scale of Rs.450 0-125-1000; that he joined duty on 1.10.1999; that thereafter the second respondent wrote a letter dated 24.8.1999 to the District Siddha Medical Officer, Sivaganga for ratification of his appointment, for which a reply was sent on 26.8.1999 stating that as

per the government letter dated 12.2.1991, the Panchayat Union Commissioner has got power to appoint qualified persons recommended by the appointment committee and when qualified persons are appointed by the appointment committee which has got power to do so, he cannot interfere with the same and hence approval is not required from him.

3. The further case of the petitioner is that he continued to be in service till 4.9.2002 i.e. for 2 years and 11 months; that he was given all benefits such as increment, bonus, loan, dearness allowance, house rent allowance, miscellaneous allowance as that of a regular employee; that he was fully qualified at the time of his appointment; while so, the second respondent, without giving any show cause notice, terminated his services w.e.f. 4.9.2002 stating that prior sanction from the first respondent was not obtained with respect to his appointment nor his appointment was ratified by

government and also there was an audit objection; that quoting the audit objection which was made during 1999-2000, after expiry of 2 years, he was terminated from service. Hence the writ petition.

4. In the counter affidavit filed by the second respondent, it would be submitted that in the appointment order issued to the petitioner, it is clearly stated that the appointment is purely temporary and will be regularised only after getting the concurrence from the Local Fund Audit and hence no increment has been sanctioned till date; that the other benefits which are eligible to Rule 10(a) (i) post are only given to the petitioner and therefore, receiving of all other benefits, excepting the increment sanction, does not in any way infer that his appointment is regular; that as per G.O.Ms.No.398 dated 13.9.19 90, any post to be filled up through employment exchange should be made following the communal rotation and also at 1:4 ratio. But the appointment of the petitioner was made without following the communal rotation and hence the appointment is irregular.

5. The further averments of the counter affidavit are that the government has not given permission for the post of Siddha Pharmacist, after the sanction of the said post stood lapsed; that the Director of Rural Development, Chennai, in his letter dated 22.1.2002, has instructed not to send any ratification proposal for the irregular appointment and hence the Local Fund Audit raised objection followed by the termination of the petitioner; that the petitioner is an irregular appointee and hence legally he is not entitled to any show cause notice. On such and other grounds, the respondents would seek to dismiss the above writ petition.

6. During arguments, the learned senior counsel appearing on behalf of the petitioner, besides reiterating the points raised in the affidavit, would submit that the petitioner has put in a service of 2 years and 11 months and that no government servant can be sent out after two years of service; that the objection raised by the Local Fund Audit is not proper; that there is no illegality in the appointment of the petitioner; that there is no other objection raised; that for the mistake committed by the government, the petitioner should not be the sufferer for no fault of his;

that without due notice, the petitioner should not have been sent out; that he is entitled to have the notice under Article 14 of the Constitution of India.

7. In reply, the learned counsel for the second respondent would submit that the petitioner was appointed only on temporary basis; that the appointment of the petitioner was found irregular as no ratification was granted; that the impugned order of termination is perfectly valid and legal. Likewise, the learned AGP appearing on behalf of the first respondent would submit that in the appointment order itself, it has been stated that the petitioner was appointed only on temporary basis and hence no notice need be given.

8. In reply, the learned senior counsel appearing on behalf of the petitioner would submit that even if the appointment is temporary, there is no power for the authority to terminate the services of the petitioner, who has served for 2 years and 11 months; that the Local Fund Audit is only a supervising authority and not the concurring authority; that only complying with all requirements, the petitioner has been appointed and hence it is a case where the entire formalities are over.

9. In consideration of the facts pleaded and having regard to the materials placed on record and upon hearing the arguments of the learned counsel for the petitioner and the learned Government Advocate on the writ side representing the second respondent and the Standing Counsel for the second respondent, what comes to be seen is that the second respondent by its order in ROC A1/2/.. dated 20.8.1993 had appointed the petitioner as the Sidha Practitioner in the vacancy that arose in the hospital of the second respondent` Panchayat Union at Pudukurichi as per the resolution of the Committee of the second respondent Panchayat Union dated 26,8,199 and in the very appointment order itself it has been made clear in para that the

appointment was temporary and the same has been confirmed in the last paragraph of the order of appointment in emphatic manner; that the appointment was purely temporary.

10. In the above circumstances, when the petitioner was served with the impugned order for nearly three years in the said capacity by the impugned order dated 4.9.2002, he has been terminated from service by the second respondent. For the reasons assigned therein i.e., in the audit report of the year 2000-2001 in paragraphs 8 and 76 since this appointment had been found effected without prior sanction from the Government it is against the Government orders in force and the permission sought for from the District Collector, for ratification of the appointment could not also be complied with. In the wake of the order of the Director of Rural Development in Roc. No.25835/98, D2 dated 22.5.2002 and therefore the second respondent would express his inability to retain the petitioner in the appointment made and hence terminating the petitioner from services with effects from 4.9.2002.

11. The termination of the petitioner from service is purely on irregular appointment made on the part of the second respondent without prior sanction from the Government and the same could also be ratified in view

of the existing order of the Director of Rural Development and therefore left with no option choice, the second respondent has terminated the petitioner from service with effects from 4.2.2002 and therefore since it is a case of termination purely on the basis of the repugnancy of the rules pertaining to the appointment made and further since it has been made very clear in the order of appointment itself that the appointment was purely on temporary in nature, the order of termination made is quite legal and the petitioner cannot claim it as of right to continue particularly when the order of termination does not attribute motive or attach any stigma to the petitioner's career and therefore this court cannot cause its interference into the impugned order of termination and hence with the following result.

In result,
(i) The above writ petition does not merit acceptance and the same is liable to be dismissed and is dismissed accordingly;
(ii) However, there will be no order as to costs.

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Index:Yes
Internet: Yes

Copy to:

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Sivaganga District.

2. The Commissioner,
Panchayat Union,
Devakotti,
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